

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Abdihakiin Ahmed Qalinle,

Petitioner,

v.

Michael Donahue,

Respondent.

No. CV-15-02190-PHX-DJH (BSB)

**REPORT AND
RECOMMENDATION**

Petitioner Abdihakiin Ahmed Qalinle (Petitioner) has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. (Doc. 1.) Respondent argues that the Petition should be denied as moot because Petitioner has been released from detention. (Doc. 10, Ex. A.) As set forth below, the Court finds that the Petition should be dismissed as moot.

I. Factual and Procedural Background

Petitioner is a native and citizen of Ghana. (Doc. 1 at 4.) On November 1, 2014, Petitioner applied for admission to the United States at the port-of-entry in Otay Mesa, California. (*Id.*) Petitioner was detained by United States Immigrations and Customs Enforcement (ICE) officials on November 3, 2014. (*Id.*) On May 5, 2015, an immigration judge ordered Petitioner removed from the United States. (*Id.*) Petitioner states that he has cooperated with efforts to effectuate his removal. (*Id.*)

On October 30, 2015, Petitioner filed a petition for writ of habeas corpus in this Court asserting that he has been detained for more than six months beyond the date his

1 order of removal became final, in violation of the Supreme Court’s decision in *Zadvydas*
 2 *v. Davis*, 533 U.S. 678 (2001). (Doc. 1.) Petitioner alleges that because his removal is
 3 not significantly likely to occur in the reasonably foreseeable future, his continued
 4 detention is unlawful under *Zadvydas*. (*Id.* at 4.) Therefore, he argues that he should be
 5 immediately released from detention under an order of supervision. (*Id.* at 9.)

6 On December 10, 2015, Respondent filed a notice of Petitioner’s release and a
 7 suggestion of mootness. (Doc. 10.) Respondent asserts that Petitioner was released from
 8 detention under an order of supervision dated November 6, 2015 (Doc. 10, Ex. A), and
 9 therefore his pending habeas petition is moot because he has been granted the relief he
 10 requested. (Doc 10, Ex. A) On December 11, 2015, the Court issued an order to show
 11 cause why this action should not be dismissed as moot because of his apparent release.
 12 (Doc. 11.)¹ Petitioner has not responded to that order, or requested an extension of time
 13 to do so.

14 **II. The Petition is Moot**

15 “Article III of the Constitution limits federal ‘Judicial Power,’ that is, federal-court
 16 jurisdiction, to hear ‘Cases’ and ‘Controversies.’” *U.S. Parole Comm’n v. Geraghty*, 445
 17 U.S. 388, 395 (1980). An actual case or controversy must exist at all stages of judicial
 18 review. *Ortez v. Chandler*, 845 F.2d 573, 574-575 (5th Cir. 1988) (holding that no case
 19 or controversy existed when movant, who challenged his bond determination, had been
 20 deported because the relief he requested, reduction of his bond, could no longer be
 21 effected.) This limitation restricts the jurisdiction of the federal courts to cases on which
 22 there is a possible judicial resolution. *Geraghty*, 445 U.S. at 395. The federal courts lack
 23 jurisdiction to review moot issues. *Gator.com Corp. v. L.L. Bean, Inc.*, 398 F.3d 1125,
 24 1128-29 (9th Cir. 2005) (stating that “[i]t is an inexorable command of the United States

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 26 ¹ The Court also ordered Petitioner to show cause why this action should not be
 27 dismissed for failure to notify the Court of his current address, or alternatively to notify
 28 the Court of his current address. (Doc. 11.) The Court’s December 11, 2015 Order was
 returned as undeliverable. (Doc. 12.) Petitioner subsequently filed a notice of change of
 address, and the December 11, 2015 Order was mailed to his new address on December
 24, 2015. Because Petitioner filed a change of address, this matter is not subject to
 dismissal based on Petitioner’s earlier failure to notify the Court of his new address.

1 Constitution that the federal courts confine themselves to deciding actual cases and
 2 controversies.”). An action is moot when the parties lack a legally cognizable interest in
 3 the outcome. *Sample v. Johnson*, 771 F.2d 1335, 1338 (9th Cir. 1985).

4 Here, Petitioner challenges his continued detention and seeks release under an
 5 order of supervision. (Doc. 1.) Because Petitioner has been released from detention
 6 under an order of supervision, the relief he requests can no longer be granted. Therefore,
 7 no “case or controversy” remains and the Petition is moot. *See Picrin–Peron v. Rison*,
 8 930 F.2d 773, 776 (9th Cir. 1991) (finding that because petitioner only requested release
 9 from custody and had been released, the court could provide no further relief and the
 10 petition was properly dismissed); *see also Abdala v. INS*, 488 F.3d 1061, 1064-65 (9th
 11 Cir. 2007) (discussing and collecting cases in which a petitioner’s release from detention,
 12 parole, or removal rendered a habeas petition moot); *Flores–Torres v. Mukasey*, 548 F.3d
 13 708, 710 n.3 (9th Cir. 2008) (dismissing as moot a challenge to immigration detention
 14 without a hearing because the alien had subsequently received a hearing). The Court
 15 does not have subject matter jurisdiction to consider a habeas claim that is moot. *See*
 16 *McCullough v. Graber*, 726 F.3d 1057, 1060 (9th Cir. 2013).

17 **III. Conclusion**

18 Because Petitioner has been released from detention, his Petition, which seeks
 19 release from detention, is moot. *See Abbot v. Federal Bureau of Prisons*, 771 F.3d 512,
 20 513 (9th Cir. 2014). Accordingly, the Court recommends that the Petition be denied as
 21 moot.

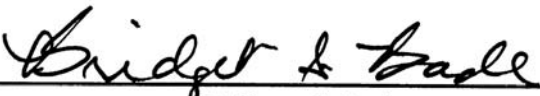
22 Accordingly,

23 **IT IS RECOMMENDED** that the Petition for Writ of Habeas Corpus pursuant to
 24 28 U.S.C. § 2241 (Doc. 1) be **DENIED** as moot.

25 This recommendation is not an order that is immediately appealable to the Ninth
 26 Circuit Court of Appeals. Any notice of appeal pursuant to Federal Rule of Appellate
 27 Procedure 4(a)(1), should not be filed until entry of the District Court’s judgment. The
 28 parties have fourteen days from the date of service of a copy of this recommendation

1 within which to file specific written objections with the Court. *See* 28 U.S.C.
2 § 636(b)(1); Fed. R. Civ. P. 6 and 72. The parties have fourteen days within which to file
3 a response to the objections. Failure to file timely objections to the Magistrate Judge's
4 Report and Recommendation may result in the District Court's acceptance of the Report
5 and Recommendation without further review. *See United States v. Reyna-Tapia*, 328
6 F.3d 1114, 1121 (9th Cir. 2003). Failure to timely file objections to any factual
7 determinations of the Magistrate Judge will be considered a waiver of a party's right to
8 appellate review of the findings of fact in an order of judgment entered pursuant to the
9 Magistrate Judge's recommendation. *See* Fed. R. Civ. P. 72.

10 Dated this 29th day of January, 2016.

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14 Bridget S. Bade
15 United States Magistrate Judge
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